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The Honorable Al Franken
United States Senate
Washington, DC 20510

Dear Senator Franken:

I am responding to your letter to AT&T Inc. regarding AT&T's use of Carrier IQ ("CIQ") software. Let me start by stating that AT&T uses CIQ software *only* to collect diagnostic information about its network to improve the customer experience. We do not use CIQ to obtain the contents of customers' communications, to track where our customers go on the Internet, or to track customer location. The information collected is protected in secure storage with restricted access.

AT&T must collect operational data that can point to possible network upgrades, including improved call completion rates. We continually evaluate information about network performance. The information gathered by CIQ software on AT&T devices has been a valuable tool for this purpose because it provides us with a device-side view of the customer's experience – a view that cannot be obtained from the network alone. This unique view enables us to better anticipate, identify and improve network and service performance.

We know well that personal data and privacy are of paramount concern to our customers. As a network service provider, we have access to a great deal of information necessarily incident to the provision of service. Our Privacy Policy commitments are fundamental to the way we do business and our privacy commitments come first when we consider the use and collection of performance data. We strive to provide transparent and easy-to-understand notice to our customers concerning the information we collect and how we use it.

Attached, please find our responses to your specific questions concerning AT&T's deployment and use of the CIQ software. If you have additional questions or concerns, please let us know.

Sincerely,

- 1. On what devices does your company use or install CIQ software?**
- 2. As of what date has your company used or installed this software on these devices?**

The CIQ software is integrated and active on eleven AT&T wireless consumer devices: Pantech Pursuit II, Pantech Breeze 3, Pantech P5000 (Link2), Pantech Pocket, Sierra Wireless Shockwave, LG Thrill, ZTE Avail, ZTE Z331, SMC Xperia Play, Motorola Atrix 2, and Motorola Bravo. It also is embedded on the HTC Vivid, LG Nitro and Samsung Skyrocket devices, but has not been activated due to the potential for the software agent to interfere with the performance of those devices. The first AT&T device to be integrated with CIQ software was the Motorola Bravo in March of 2011.

CIQ software is also packaged with AT&T's Mark the Spot (MTS) application, which is offered without charge from the Android Market and RIM Apps World storefronts. The RIM version of MTS was packaged with CIQ in February 2011, with the Android version following in March 2011.

AT&T first released the MTS application – without CIQ software – for iPhone in December 2009. We later made the application available in both the Android and RIM marketplaces.

The rapid adoption of MTS by iPhone customers, and by RIM and Android customers when made available for those devices, provided AT&T with new insights into the network problems experienced by customers while using their devices and new abilities to address those problems in a direct and effective manner. It also informed us that, not only did customers want us to improve their network experience, they also recognized the value of using information gathered from their devices for that purpose.

It was AT&T's positive experience with MTS that ultimately lead to AT&T's decision to enhance its network reporting capabilities by packaging CIQ software with MTS and integrating it into the devices we offer to customers.¹

- 3. To the best of your knowledge, how many American consumers use these devices?**

We can only answer this question for AT&T customers. CIQ software (including versions integrated on the device and downloaded with AT&T's MTS application) is resident on about 1% of the devices on AT&T's wireless network, or approximately 900,000 devices, with 575,000 of those collecting and reporting wireless and service performance information to AT&T.

- 4. Does your company receive customer location data collected by Carrier IQ software or by Carrier IQ?**

Yes. To improve customer service, the CIQ software provides AT&T with the location, date and time the handset experiences a network event, such as a dialed or received telephone call, a dropped call or an attempted call when the handset has no signal. This information tells AT&T where the device was at the time of the occurrence – a device-side view of the customer experience that enhances AT&T's ability to identify the cause and solution for the problem.

¹ AT&T MTS without CIQ is still available for iPhone downloads. MTS packaged with CIQ has never been available for iPhone customers.

5. What other data does your company receive that has been collected by Carrier IQ software or by Carrier IQ?

- a. The telephone numbers users dial?
- b. The telephone numbers of individuals calling a user?
- c. The contents of the text messages users receive?
- d. The contents of the text messages users send?
- e. The contents of the emails they receive?
- f. The contents of the emails users send?
- g. The URLs of the websites that users visit?
- h. The contents of users' online search queries?
- i. The names or contact information from users' address books?
- j. Any other keystroke data?

AT&T collects technical data via its version of CIQ software for network and service improvement purposes. The CIQ software agent is a diagnostics package that is either integrated into each of the device types listed above as part of the manufacturing process ("integrated CIQ"), or has been downloaded to a device via AT&T's Mark the Spot application ("downloaded CIQ"). As described in more detail below, both the integrated and downloaded CIQ agents allow for the collection of metrics associated with device and network events. AT&T specifies the metrics it wants the CIQ software to collect by defining a CIQ profile for that collection; CIQ then writes code designed to collect the information necessary to satisfy AT&T's profile requirements.

These metrics include:

- **Voice Call Performance.** Certain AT&T CIQ profiles collect information to assist AT&T in determining whether calls made from the device were successful or unsuccessful, including whether calls were dropped or call attempts failed.
- **Data Performance.** Certain AT&T CIQ profiles collect information to assist AT&T in determining whether data sessions attempted by the device were established successfully or unsuccessfully, including whether the data session attempt failed, or was dropped after being established.
- **Device Stability.** Certain AT&T CIQ profiles collect information to assist AT&T in determining the reason for any device stability issues on the AT&T wireless network, such as device shutdowns or battery performance.
- **Network Coverage/Roaming.** Certain AT&T CIQ profiles collect information to assist AT&T in identifying coverage gaps in our network, such as the location of any shift to roaming.
- **Messaging Performance:** On a trial basis, AT&T is collecting information on certain CIQ profiles for the purpose of evaluating whether that information will be helpful in assessing network performance problems associated with text messaging. Although collected, this information has not yet been accessed or analyzed by AT&T.
- **Application Performance:** Also on a trial basis, AT&T is collecting collected information on certain CIQ profiles for the purpose of evaluating whether that

information will be helpful in assessing network performance problems associated with application performance. Again, this information has not yet been collected or analyzed by AT&T.

After the data is collected by the software, it is stored in the customer's device in a compressed and encoded format, and then transmitted to AT&T's secure servers over an encrypted communications channel to secure AT&T servers located behind AT&T's firewall. AT&T's CIQ profiles are designed so that data uploads from customer handsets do not incur charges. Except in limited circumstances (as, for example, when the device is turned off), those uploads occur once every 24 hours.

In response to your inquiry as to specific data types listed in Question No. 5:

- AT&T **does** collect telephone numbers from the network in the ordinary course of its business as necessarily incident to the provision of wireless voice and text messaging services. AT&T also **does** collect the telephone numbers sent and received by the device user for Voice Call Performance and Messaging Performance metrics as described above. The telephone number assists us in determining why a particular call or text message is dropped or otherwise could not be placed or received by the customer. For example, if we see numerous dropped calls to the same number, we are able to investigate whether the underlying cause is a dialing error or a routing problem, and take necessary steps to address the issue.
- AT&T **does not** collect the contents of e-mails sent and received by device users;
- AT&T **does not** collect the URLs of websites visited by individual users;
- AT&T **does not** collect the contents of user's online search queries;
- AT&T **does not** collect the names or contact information from users' address books;
- AT&T **did not** define any of its CIQ profiles to collect the content of text messages sent or received by users.

As CIQ has stated publicly and also advised AT&T, during the course of its investigation into this matter, CIQ found that, as a result of a programming error related to the capture of signaling data associated with voice calls, the CIQ software also captured the content of SMS text messages when – and only when -- such messages were sent or received while a voice call was in progress. Because it did not request that this data be collected, AT&T did not know the SMS text data was being transmitted to its secure servers until it was informed by CIQ. The data has not been accessed by any AT&T employees and, in fact, it is encoded in such a manner that AT&T is unable to view it without decoding software from CIQ – which AT&T has not and does not intend to obtain. AT&T currently is retaining this data in response to a legal hold imposed due to pending litigation.

To remedy this inadvertent collection of unreadable SMS text messages, we have taken the following steps: 1) we have implemented a script that prevents the storage of any new data transmitted to AT&T's servers from devices that are still running the profile

collecting SMS Text messages; 2) working with CIQ, we have modified our profiles to avoid this programming error and we are instructing all devices with the affected profiles to discontinue the collection of SMS text messages; and 3) we have implemented a process to verify that any new AT&T CIQ profiles will not inadvertently collect SMS text message content.

- **AT&T does not** collect keystroke data.

AT&T's version of the CIQ software is programmed to be aware when keystrokes are entered on the device, but the data entered on the keypad is not collected by the CIQ agent or downloaded to the secure AT&T server.

6. If your company receives this data, does it subsequently share it with third parties? With whom does it share this data? What data is shared?

In line with our Privacy Policy, we have shared limited data with CIQ as necessary to troubleshoot problems and test the software and platform performance subject to the conditions noted above. We have not shared CIQ information with any other non-AT&T company.

7. Has your company disclosed this data to federal or state law enforcement?

No, we have not disclosed CIQ data to federal or state law enforcement. The AT&T Privacy Policy and FAQ on Information Sharing address circumstances under which we disclose personal information to law enforcement. We provide personal information as necessary to comply with court orders, subpoenas, lawful discovery requests, legal or regulatory requirements, to enforce our legal rights or defend against legal claims, or when otherwise permitted by law (e.g., to prevent death or serious injury). We do not disclose personal information to law enforcement except under those circumstances.

8. How long does your company store this data?

CIQ data is erased so that it is no longer retrievable from the AT&T CIQ servers 60 days after being uploaded from the device. Of the three downstream systems receiving personally identifiable CIQ data from the AT&T server for analysis purposes, one deletes the data after 45 days, one has CIQ data from September of 2011, and one has data from May 2011. AT&T's retention of data is subject to any legal holds that may apply to the data in connection with actual or anticipated litigation.

9. How does your company protect this data against hackers and other security threats?

AT&T uses technical, administrative and physical safeguards to protect this information. Data collected by the CIQ software on AT&T devices is uploaded daily from the device and transmitted in encrypted format directly to AT&T servers located inside AT&T's secure firewalls. These servers are uniquely provisioned for CIQ data and adhere to AT&T's security policy and requirements that include authentication, access controls, security settings, and administrative procedures, among other items. The servers are monitored 24x7 for performance, reliability and unauthorized intrusion. Only properly authorized, authenticated, and approved AT&T employees, CIQ personnel and contactors acting on behalf of AT&T have access to the data on this server. Additionally, our AT&T Labs Operations meets daily to review security, compliance, performance and availability of the

CIQ data and the AT&T Network organization meets weekly to address program status and conducts weekly device testing and certification procedures.

10. **Does your company believe that its actions comply with the Electronic Communications Privacy Act, including the pen register statute (18 USC § 3121 et. seq.), the federal wiretap statute (18 USC § 2511 et seq.) and the Stored Communications Act (18 USC § 2701 et seq.)?**

Yes.

11. **Does your company believe that its actions comply with the Computer Fraud and Abuse Act (18 USC § 1030)?**

Yes.

12. **Does your company believe that its actions comply with your privacy policy?**

Yes. Please see our response to Question 13 for more detail.

13. **Does it believe that consumers are aware that this activity is actually occurring on their devices?**

Yes. Clear notice is included in the AT&T Privacy Policy, our Wireless Customer Agreement and the MTS End User Licensing Agreement (EULA) that we collect network, performance, and usage information from our network and customer devices, and we use that information to maintain and improve our network and their wireless experience.

The AT&T Wireless Customer Agreement and the AT&T MTS End User License Agreement (EULA), explain that AT&T uses information from their devices for network service improvement.

Mark the Spot Sign-up: A customer downloading the AT&T MTS application receives and agrees to the EULA for that service. A copy of the first screen of that EULA is Exhibit A to this letter. It states:

IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, INCLUDING THE COLLECTION AND USE OF YOUR LOCATION AND PERFORMANCE INFORMATION (*SEE SECTION 1.1*), DO NOT CLICK THE “ACCEPT” BUTTON OR DOWNLOAD, INSTALL OR USE THE APPLICATION.

Section 1.1 of the MTS EULA then advises the user:

CONSENT TO USE LOCATION AND PERFORMANCE

INFORMATION: This Application accesses and uses Your personally identifiable location information (“Your Location Information”), as well as performance and usage information from your Device (“Your Performance Information”), in order to maintain and improve our network and the quality of Your wireless experience. The Information may be accessed by AT&T through any available wireless connection, including but not limited to Wi-Fi (AT&T may, through this Application, turn on Your Device’s Wi-Fi radio to access the Information). By using this Application, You agree that AT&T may collect and use Your Location and Performance Information for such purpose. AT&T does

not retain Your Location or Performance Information longer than is reasonably necessary for such use....

Wireless Customer Agreement: Customers purchasing wireless devices from AT&T for use on the AT&T network agree to the AT&T Wireless Customer Agreement. Section 3.6 of that agreement provides:

AT&T collects information about the approximate location of your Device in relation to our cell towers and the Global Positioning System (GPS). We use that information, as well as other usage and performance information also obtained from our network and your Device, to provide you with wireless voice and data services, and to maintain and improve our network and the quality of your wireless experience....

Separate and apart from these notices, the AT&T Privacy Policy provides explicit notice to customers about the information we collect and how we use it. Our upfront policy statement provides:

Location Information

We monitor, collect and use your wireless location information, as well as other information obtained from our network and your device, to provide you with wireless voice and data services, and to maintain and improve our network...

We elaborate further on this provision in the Location FAQ section of the policy, where we respond to the following question:

Do you collect and use my wireless location information?

Yes. AT&T monitors, collects and uses wireless location information to provide you with wireless voice and data services. We also use that information, together with other usage and performance information obtained from our network and your wireless device, to maintain and improve our network and the quality of your wireless experience....

End User License Agreement



Accept

Decline

End User License Agreement for

MARK THE SPOT

IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, INCLUDING THE COLLECTION AND USE OF YOUR LOCATION AND PERFORMANCE INFORMATION (SEE SECTION 1.1), DO NOT CLICK THE "ACCEPT" BUTTON OR DOWNLOAD, INSTALL OR USE THE APPLICATION.

THIS APPLICATION IS NOT INTENDED FOR USE BY PERSONS UNDER THE AGE OF 13. IF YOU ARE UNDER 13 YEARS OLD, YOU MAY NOT USE THIS APPLICATION OR PROVIDE AT&T WITH ANY PERSONALLY IDENTIFIABLE INFORMATION. IF YOU ARE 13 OR OLDER BUT NOT OF LEGAL AGE TO ENTER INTO A